

TOWN OF BAR HARBOR
Appeals Board
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Bar Harbor, Maine 04603-1400
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Decision

Public Hearing: AB-2019-01 - Administrative Appeal

Applicant: Elizabeth Mills, Trustee of the Collier Family Trust

Project Location: The property is located at 25 West Street Extension, Bar Harbor, Tax Map 103, Lots 048-000 and 049-000, within the Bar Harbor Village Residential zoning district.

Application: The applicant requests that the Board of Appeals hold a public hearing for an administrative appeal of the Planning Board's February 6, 2019 written decision, pertaining to a Subdivision and Site Plan for a Planned Unit Development application known as PUD-2017-02 pursuant to section 125-103 of the Bar Harbor Land Use Ordinance.

Under authority of section 125-103 of the Bar Harbor Land Use Ordinance (LUO), the Board of Appeals, at its February 11, 2020 meeting, by a motion duly made and seconded, vacated a portion of the Planning Board decision, and remanded the application to the Planning Board, based upon the below noted findings:

Findings

1. The record supports the Planning Board's finding that the project is a lawful nonconforming lot, pursuant to LUO section 125-56.
2. The proposed project contains at least one nonconforming structure, as the structures do not meet the dimensional standards set forth in LUO section 125-20(B)(10), and the Planning Board's contrary finding is clearly contrary to that section.
3. The record supports the Planning Board's finding, per LUO section 125-69(S)(1)(a), that the project is residential, does not include transient accommodations, and is a permitted use per LUO section 125-69(S)(2)(a).
4. The record supports the Planning Board's finding, per LUO section 125-109, that the project residents meet the section's definition of "family".
5. The record supports the Planning Board's finding that the project meets applicable PUD-V standards for open space and buffering, in accord with LUO sections 125-69(S)(1)(a)(1) and 125-69(S)(5).

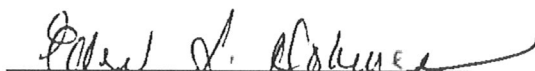
6. Based upon evidence before the Planning Board that the project will mitigate adverse conditions affecting historic gardens on an adjacent property, the record supports its finding that LUO section 125-67(X) standards have been met.
7. Based upon the project's 85,523+/- square-foot lot size, the Planning Board record does not support its finding that the base development density provisions of LUO section 125-69(S)(6)(a)(1) allow 9 units, and that finding is clearly contrary to that section.
8. Based upon the Planning Board's incorrect calculation of base development density, the Planning Board's determination of maximum allowable units is clearly contrary to LUO section 125-69(S)(6)(a)(3).
9. Based upon the Planning Board's incorrect calculation of base development density, the Planning Board's determination of the number of required affordable housing units is clearly contrary to LUO section 125-69(S)(6)(b).
10. The record supports the Planning Board's determination of appropriate rear setback, and distance between buildings, and its decision is not clearly contrary to LUO sections 125-64 and 125-67(B)(3).
11. The record supports the Planning Board's determination that the affordable housing proposal, aside from the number of required affordable housing units, meets the requirements of LUO section 125-69(R)(3)(a).

Decision

Based upon the findings and conclusions above, the Board of Appeals voted to vacate the Planning Board decision, and remand the matter to the Planning Board in accord with LUO section 125-103(D)(1)(I), limited to consideration of base development density, maximum allowable units, and required affordable housing units only, consistent with the Board's findings above. The Board of Appeals denied the appeal as to all other issues raised.

Any interested party is entitled to request a reconsideration of this decision by the Board of Appeals within 10 days from the hearing date when the decision was made, and/or appeal to the Maine Superior Court within 45 days of the same hearing date.

Signed as witness to the proceedings:


Ellen L. Dohmen, Chair

Date: February 13, 2020

Town of Bar Harbor, Maine

Planning Board Meeting

April 29, 2020

(Excerpt of Meeting)

Maine Court Reporting Services

1 those plans.

2 But I think that the underground utility question
3 is not -- not really an issue because the record shows
4 that this part is the pedestrian amenities.

5 What happened with this is that we had proposed, if
6 you'll recall, a sidewalk along West Street. It was
7 supposed to come off of here and a bus stop. Chip and I
8 talked about it. Chip presented numbers to the council.
9 The council elected not to participate.

10 It's my best recollection that this was accepted as
11 pedestrian [inaudible]. It was side stairs and this
12 patio which gave these people pedestrian access from
13 Woodbury Road, so they didn't have to walk up and down
14 West Street.

15 I don't recall that we were ever talking about
16 making a connection to the downtown. If that's going to
17 be the sword we have to fall on, I don't want to go
18 there.

19 I think we -- the underground utilities are clearly
20 provided. There were several utility plans shown, and
21 that's where we were at; but I think at the end of the
22 day we're talking about 8 units, underground utilities,
23 it's 9. If we want to go 4 and 4 to get to there, I
24 don't see that that's it.

25 I think in the interest of making this easier for

1 on your decision.

2 MR. FITZPATRICK: All right. Ready for me to give
3 it a crack?

4 CHAIR ST. GERMAIN: Let's have it, John.

5 MR. FITZPATRICK: Let's see, okay. So in response
6 to the Bar Harbor appeals board decision, specifically
7 related to AB-2019-01 dated February 13th, 2020, I would
8 move to approve the subdivision site plan PUD-2017-02,
9 BHAPTS with the condition the subdivision plan be
10 recorded in the registry of deeds, stamped by a public
11 land surveyor prior to being signed by the planning
12 board as it complies to LUO specifically as follows:

13 The planning board finds that the base development
14 density number based on LUO Section 125-69S(6)(a)(1) to
15 allow 8 units. The planning board also finds based on
16 LUO Section 125-69S(6)(a)(3) that the maximum allowable
17 units under the PUD shall be 16. And the planning board
18 also finds based on LUO Section 125-69S(6)(b) that the
19 number of base affordable units shall be 3, and finds
20 that with the applicant providing 1 additional unit for
21 the provision of underground utilities -- that's a
22 market unit -- 1 additional market unit for the
23 provision of amenities as outlined in
24 125-69S(6)(a)(2)(e) for a total of 13 market units and 3
25 affordable units.

1 MR. COUGH: I'll second that. Make a motion, John.

2 CHAIR ST. GERMAIN: Okay. So moved and seconded.

3 Do members have any further discussion or points to
4 make?

5 MR. ELEFThERIOU: I don't know if it's important to
6 note, John -- I don't know if you want to add something
7 to your motion -- just the fact of how we got to the
8 number 1, affordable unit. We had a discussion earlier
9 between 1 and 2.

10 And 125-69R(3)(f) specifically states that we round
11 down to 1. I just didn't know if that was worthwhile
12 adding. Just as a point of clarity.

13 MR. FITZPATRICK: I would -- I guess I would
14 suggest that we go outside of that and just say that it
15 meets 125-69S(6)(3)(b).

16 MR. ELEFThERIOU: Okay. That's fine. I second.

17 MR. COUGH: I would like to ask Ed if he sees any
18 omissions in the motion?

19 MR. BEAROR: The only omission, if it might be
20 there, maybe I just didn't hear it, I heard John
21 describe 1 unit for underground utilities. I didn't
22 hear mention of whether there was a second unit. I
23 didn't know if we were agreeing -- it seems like we were
24 because you only came up with 3 affordable units that
25 you must have also found that they were pedestrian

1 amenities?

2 MR. FITZPATRICK: Yeah, we did, I think I referred
3 to that.

4 MR. BEAROR: If the board members think you
5 referred to it, then that's fine. I didn't -- I didn't
6 pick up on it. If the board members heard you say or
7 reference the right section, amenities --

8 MR. MOORE: So forgive me for jumping in, but he
9 did say 16. That is pedestrian amenities.

10 MR. COUGH: As far as the second one is concerned,
11 whether I mentioned it or not in detail, I certainly
12 referenced it by discussion so --.

13 MR. BEAROR: I don't see any [inaudible].

14 MR. COUGH: I'm fine with the way it was. If
15 there's nothing else, then that's good.

16 CHAIR ST. GERMAIN: Just to be clear, John, was
17 your motion a conditional one, if the pedestrian
18 amenities are to be shown on the plan from 2017 or is it
19 based on the --

20 MR. FITZPATRICK: It was accepting of what Perry
21 shared. That date matches the record.

22 CHAIR ST. GERMAIN: Okay.

23 MR. FITZPATRICK: The date on the drawing matches
24 the record.

25 CHAIR ST. GERMAIN: Okay. And you're saying

1 that -- so you're basing your motion on the presentation
2 that we just saw, which was the plans from 2017?

3 MR. FITZPATRICK: Yeah, and I just looked it up
4 electronically in the package I received in January of
5 2019 as well.

6 CHAIR ST. GERMAIN: So it's been moved and
7 seconded. Do any other members have anything to add to
8 this at this point?

9 All right. I'll call a vote. Joe?

10 MR. COUGH: Aye.

11 CHAIR ST. GERMAIN: I think you're muted, Basil.
12 Thank you.

13 MR. ELEFThERIOU: Aye.

14 CHAIR ST. GERMAIN: Erica.

15 MS. BROOKS: Aye.

16 CHAIR ST. GERMAIN: Thank you.

17 MR. HAMILTON: Thank you very much.

18 CHAIR ST. GERMAIN: Thank you.

19 MR. MOORE: So, John, just a little bit of
20 housekeeping here. So what we will do is revise the
21 plat to reflect there are 3 affordable units required?

22 MR. FITZPATRICK: Correct.

23 (This portion of the planning board meeting was
24 concluded.)

25

Town of Bar Harbor, Maine
Planning Board Meeting
January 16, 2018

(Transcribed from Video Streamed Material)

1 to see what it says.

2 MR. GREIF: I suggest you do.

3 CHAIR ST. GERMAIN: Well, your 3 minutes is
4 starting now.

5 MR. GREIF: Thank you. The declaration of
6 covenants limits -- The affordable housing units shall
7 be occupied by BH APTS employees and their families. So
8 it limits occupancy only to Bar Harbor APTS employees.

9 I don't know that Bar Harbor Apts actually has any
10 employees, and that vitiates the whole marketing thing,
11 because what is the point of advertising in a
12 publication of general circulation when you're going to
13 offer it only to your employees coming up from Jamaica
14 and wherever else?

15 I would -- I understand that this marketing plan is
16 the one that was approved for the West Street Hotel, but
17 I do not believe that the affordable units and West
18 Street Hotel are currently occupied or are currently
19 marketed.

20 At an absolute minimum, you need to have in the
21 covenants and in the marketing plan a requirement that
22 the applicant provide on an annual basis every lease
23 signed for an affordable unit and the income
24 verification that accompanied that lease so you can
25 verify that the renter meets the qualifications for